

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
San Juan Cable LLC d/b/a OneLink)	
Communications)	CSR-8369-Z
)	
Petition for Waiver of Section 76.630(a))	
Basic Tier Scrambling)	

MEMORANDUM OPINION AND ORDER

Adopted: January 13, 2011

Released: January 14, 2011

By the Chief, Media Bureau:

I. INTRODUCTION

1. San Juan Cable LLC d/b/a OneLink Communications (“OneLink”), operator of a cable system serving the greater San Juan metropolitan area of Puerto Rico, filed the above-captioned petition for special relief requesting waiver of Section 76.630(a) of the Commission’s rules. Section 76.630(a) of the rules provides that “[c]able systems shall not scramble or otherwise encrypt signals carried on the basic service tier.”¹ The instant waiver request is based on petitioner’s contention of significant theft of cable television service in its service area. Several subscribers to OneLink’s cable system have filed comments in this proceeding to which OneLink replied. One commenter subsequently filed an opposition to OneLink’s reply. For the reasons discussed below, OneLink’s petition is granted.

II. BACKGROUND

2. In the Cable Television Consumer Protection and Competition Act of 1992 (“1992 Cable Act”), Congress recognized that compatibility problems between cable service and consumer electronics equipment were limiting and/or precluding the operation of premium features of consumer equipment and were affecting the ability of consumer equipment to receive cable programming.² Section 624A of the Communications Act of 1934, as amended (“the Act”), Consumer Electronics Equipment Compatibility, was added by Section 17 of the 1992 Cable Act.³ Section 624A required the Commission to issue regulations to assure compatibility between consumer electronics equipment and cable systems.

¹47 C.F.R. § 76.630(a).

²Pub. L. No. 102-385, 106 Stat. 1460 (1992).

³47 U.S.C. § 624A.

3. In *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992 – Compatibility Between Cable Systems and Consumer Electronics Equipment*, the Commission adopted rules to implement the requirements of Section 624A.⁴ Section 76.630(a) requires that cable operators refrain from scrambling signals carried on the basic tier of service.⁵ The Commission determined that this rule would significantly advance compatibility by ensuring that all subscribers are able to receive basic tier signals “in the clear” and that basic-only subscribers with cable-ready televisions will not need set-top devices.⁶ Based on a recognition that there are some instances where operators may need to scramble signals, the rule provides for waivers of the scrambling prohibition upon a showing of “either a substantial problem with theft of basic tier service or a strong need to scramble basic signals for other reasons.”⁷

4. The procedures adopted by the Commission require a cable operator to notify subscribers by mail that it has filed a request for waiver of the scrambling prohibition with the Commission. The notice to subscribers, which is delineated in Section 76.630(a), must be mailed no later than thirty calendar days from the date the waiver request was filed with the Commission. Subscribers have 30 days from the date of the notice to mail comments to the Commission. The cable operator may file comments in reply no later than 7 days from the date subscriber comments must be filed. OneLink notified subscribers of its petition requesting the ability to scramble the basic tier. Fifteen subscribers filed comments to OneLink’s petition and one subscriber filed an opposition to OneLink’s reply.

III. DISCUSSION

5. In its petition, OneLink requests that the Commission waive Section 76.630(a) of its rules to allow OneLink to encrypt the basic tier of service on its cable system once it completes its transition from analog format to an all-digital format.⁸ OneLink argues that its petition is warranted because it faces an on-going problem with cable theft.⁹ OneLink notes that the Commission granted similar waivers to two other cable operators in Puerto Rico which faced similar issues – *Liberty Cablevision of Puerto Rico, Inc.*,¹⁰ and *Centennial Puerto Rico Cable TV Corp.*¹¹ OneLink acknowledges that because cable theft rates in Puerto Rico have fallen substantially since the *Liberty* and *Centennial* decisions, its own cable theft rates are not as extreme in absolute terms as those reported in the previous Puerto Rico waiver decisions.¹² However, OneLink argues that, when compared to the more recent industry averages, its

⁴9 FCC Rcd 1981 (1994) (“*Compatibility Report and Order*”).

⁵47 C.F.R. § 76.639(a).

⁶*Compatibility Report and Order*, 9 FCC Rcd at 1991.

⁷47 C.F.R. § 76.630(a).

⁸Petition at 1. OneLink has asked that the Commission expedite consideration of this petition and grant the requested waiver no later than December 31, 2010 as OneLink intends to begin conversion to an all-digital system in early 2011. OneLink states that expedited grant of the waiver is needed to allow it to coordinate encryption of its basic tier with the digital conversion so as to avoid unnecessary technical, logistical and administrative complexities.

⁹*Id.* at 2.

¹⁰*Id.*, citing 15 FCC Rcd 15064 (2000) (“*Liberty*”).

¹¹*Id.*, citing 18 FCC Rcd 7736 (2003) (“*Centennial*”).

¹²*Id.* at 3.

cable theft problem is actually more severe than that faced by either Liberty or Centennial.¹³ Pursuant to a theft audit conducted in 2004, OneLink estimated a 9.9 percent rate of cable theft relative to the number of homes passed, more than double the industry-wide rate of 4.97 percent found by NCTA in the same year.¹⁴ OneLink states that the results of a second audit conducted in 2006 found that its theft rate had fallen to 6.9 percent of homes passed.¹⁵ Despite the drop in theft rate, however, OneLink argues that the amount is still 39 percent higher than the national average of 4.97 percent.¹⁶ OneLink contends that the costs associated with disconnection and reconnection service calls, system repair and maintenance, and other administrative problems related to illegal connections result in significant financial outlay. Further, in a supplement to its petition, OneLink states that it conducted an audit from November 8-13, 2010 in the six worst neighborhoods of its system in terms of damaged facilities.¹⁷ After conducting this audit of an area that comprises just 4.2 percent of homes passed on its system, OneLink found that the illegal connections in these six neighborhoods represented an overall cable theft rate of 30.6 percent.¹⁸ OneLink argues that the November audit proves, if nothing else, that there is a continuing and very serious problem with theft in multiple parts of the system warranting a waiver of the prohibition on basic tier encryption.

6. OneLink argues that theft of its basic service imposes a more substantial financial burden on OneLink and its paying subscribers than that faced by either Liberty or Centennial.¹⁹ In addition, OneLink asserts that the tampering done with its cable plant in order to establish illegal connections compromises the physical integrity of the system which can result in diminished quality of service for authorized customers, increased signal leakage, and other potentially serious technical issues.²⁰ OneLink contends that it makes every reasonable effort to combat cable theft through educating and penalizing offenders.²¹ OneLink maintains, however, that its efforts have been severely hampered by significant safety concerns for its technicians, a robust black market for illegal cable connections in the San Juan area, and harsh economic conditions throughout the Commonwealth.²² Moreover, even when disconnections are accomplished, cable thieves, who openly offer such service, often quickly reestablish

¹³*Id.* For instance, OneLink states that Liberty's theft rate of 21 percent in 2000 was just under twice the national average that time (*i.e.*, 11.48 percent).

¹⁴*Id.* at 3-4. OneLink states that this estimate is based on a 2004 external signal theft audit of 15,371 randomly selected homes passed; *see also* Press Release, NCTA, New Survey Finds Significant Drop in Cable Theft Rate (Apr. 11, 2005).

¹⁵Petition at 4. OneLink states that this estimate was based on a 2006 external signal theft audit of 29,352 randomly selected homes passed.

¹⁶*Id.* OneLink points out that its 39 percent figure is also worse than the 35 percent difference between Centennial's theft rate of 15.49 percent and the corresponding national average of 11.48 percent.

¹⁷Supplement at 2.

¹⁸*Id.* at 2-3. OneLink notes that in the three weeks since the November audit was conducted, only one percent of the previously illegally connected subscribers have become paying customers.

¹⁹*Id.*

²⁰*Id.* at Exhibit A.

²¹*Id.* at 5.

²²*Id.* at 5 and Exhibit A. Indeed, OneLink states that its technicians have been physically threatened while trying to disconnect illegal connections.

the unauthorized connections.²³ OneLink argues that the ability to encrypt the basic tier is critical to eliminate the incentives to establish (or reestablish) these unauthorized connections.²⁴

7. OneLink argues further that, in connection with its transition to an all-digital system, encryption of the basic tier will yield substantial benefits for both OneLink and its paying subscribers by allowing it to keep its cable drops physically connected continuously so that it can disconnect and reconnect its service remotely.²⁵ More importantly, OneLink maintains, remote connectivity will improve the safety of its service technicians who will be required to perform far fewer physical disconnections in order to curb cable theft.²⁶ OneLink argues that the transition to a fully encrypted all-digital system will also allow it to provide more content and improved service offerings to its customers, as well as improving the overall quality of its service.²⁷ While OneLink admits that its transition to an all-digital system will have an impact on its existing subscribers by requiring all customers to have set-top boxes or CableCARDS, it maintains that there will be virtually no additional impact on customers as a result of encrypting the basic tier.²⁸ OneLink states that not only is it launching a major advertising campaign about the digital conversion, but it will offer up to two basic digital set-top boxes without charge for one year to each qualifying existing basic-only subscriber who did not previously have such equipment.²⁹

8. In several comments filed by OneLink subscribers, most appear to be concerned with an increase in fees or the necessity of requiring set-top boxes as a result of the encryption. One subscriber appears concerned about the loss of services without notification or explanation by OneLink. In reply, OneLink notes that none of its customers who commented in this proceeding opposed the proposed encryption itself, but merely the potential costs for additional equipment, regardless of the cause.³⁰ OneLink argues, however, that all of its basic and expanded-basic customers (except for a small number who have digital-ready televisions) will need set-top boxes when the system transitions to an all-digital system, even if the requested encryption waiver is not granted.³¹ As a result, OneLink states that, while these comments do not provide a basis for denial of its waiver request, it wants to assure the Commission that it understands the commenters' concerns by proactively taking steps to minimize the potential burden on its customers.³² One final comment in opposition to OneLink's reply contends that the petitioner's

²³*Id.* at 6.

²⁴*Id.* at 7. In a supplement, OneLink states that the six neighborhoods audited in November 2010 comprise the most dangerous areas of its system and its contractors depend on heightened police presence for protection while operating in these areas. *See* Supplement at 2.

²⁵Petition at 8. OneLink states that remote activation and disconnection eliminates the need for subscribers to make service appointments as they can order service over the telephone or online, pick-up set-top boxes at their convenience and connect the boxes to their televisions without the need of a technician. *See Cablevision Systems Corporation*, 25 FCC Rcd 134, 139 (MB 2010).

²⁶*Id.*

²⁷*Id.* at 9.

²⁸*Id.* at 10. OneLink anticipates that after its digital conversion, more than 99 percent of customers will have set-top boxes or Cable CARDS. OneLink states that this penetration percentage is consistent with the pre-encryption percentages reported by Liberty (98 percent) and Centennial (96 percent).

²⁹*Id.* at 11. OneLink states that such boxes will be available at a reduced rate for the second year.

³⁰Reply at 2.

³¹*Id.*

³²*Id.*

request for waiver is simply a veiled attempt to raise rates, without addressing concerns about the service provided to its customers.

9. We find that OneLink's contentions regarding a substantial problem with theft justify granting the requested waiver. OneLink presents evidence establishing that the percentage of homes in its franchise illegally connected to its system is substantially greater than the industry average nationwide.³³ Moreover, OneLink has noted serious safety concerns in attempting to monitor and correct such theft. The high number of illegal connections creates a potential for signal leakage as well as a diminishment in the quality of the video signal received by authorized subscribers. OneLink's audits demonstrate that cable theft is a significant problem throughout its service area and this high percentage remains despite OneLink's efforts in educating and contacting known offenders. Indeed, OneLink has stated that, because of a thriving black market in cable service, illegal connections which have been disconnected are almost immediately reconnected afterwards.

10. We recognize that allowing any cable system to scramble its basic tier will require some subscribers to obtain set-top boxes. In this instance, because of OneLink's impending digital conversion, the majority of its subscribers will require set-top boxes regardless of whether encryption of the basic tier also takes place. Indeed, OneLink has stated that it expects the percentage of subscribers who will have set-top boxes after conversion to be over 99 percent.³⁴ As a result, we believe that problems related to incompatibility between cable service and consumer electronics equipment will be minimal or nonexistent. Further, with less compromise to the physical integrity of its system, OneLink will be able to offer a better quality signal to all authorized subscribers. We conclude, therefore, that the signal quality, technician safety and cable theft problems demonstrated by OneLink weigh in favor of granting the requested waiver to encrypt the system's basic tier.

11. It appears that the few objections to OneLink's petition are actually aimed at OneLink's decision to convert its system to an all digital format. As the Commission has repeatedly stated, "[t]his is a business decision made by the cable companies and is not required by the federal government."³⁵ Further, many of OneLink's subscribers already rent set-top boxes. Because OneLink expects that the majority of its subscribers will have set-top boxes after the system's digital conversion no additional charges will be incurred due to encryption. We believe, consistent with our previous decisions in *Liberty* and *Centennial*, that subscribers who did not need a set-top box prior to basic tier scrambling should not be charged for the initial installation of the box after scrambling begins because the scrambling is for the convenience of OneLink, and not to provide additional services requested by the subscriber. OneLink has stated that, due to its digital conversion and simultaneous encryption, it will be offering the set-top boxes free of charge for the first year and at a reduced rate during the second year which should assuage the major concern expressed in comments to this petition. With regard to set-top boxes offered free of charge for the first year and at a discounted rate for the second year, we also encourage OneLink to offer set-top boxes that are capable of passing through a high-definition signal to any subscriber who requests one. As OneLink will be encrypting the basic service tier, which may include high definition broadcast signals, it

³³See n.15 above.

³⁴See Petition at 10.

³⁵See DTV Transition Does Not Require Cable Systems To Switch To Digital (Aug. 19, 2009), <http://www.fcc.gov/cgb/consumerfacts/dtvcable.html>.

should provide its customers with the means to access those signals without degradation and without additional financial burden.³⁶

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED**, that the petition filed by San Juan Cable LLC d/b/a OneLink Communications requesting a waiver of the Commission's rules prohibiting scrambling of channels on the basic service tier **IS GRANTED**.

13. This action is taken pursuant to delegated authority by Section 0.283 of the Commission's rules.³⁷

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

³⁶See 47 C.F.R. § 76.62(b).

³⁷47 C.F.R. § 0.283.